



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.08.2020

CORAM

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

W.P. (MD) No. 8197 of 2020

R. Kanmani

... Petitioner

Vs.

1. The Revenue Divisional Officer cum Sub Collector,
Office of the Revenue Divisional Office cum
Sub Collector,
Paramakudi,
Ramanathapuram District.

2. The Assistant Director,
Department of Geology and Mines,
Ramanathapuram,
Ramanathapuram District.

3. The Inspector of Police,
Paramakudi Taluk police station,
Paramakudi,
Ramanathapuram District.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents to release the petitioner's vehicle JCB bearing registration No.TN 65-AW-2881 and Tractor with Trailer bearing Registration No.TN 65-B-5956 and Tipper lorry bearing registration No.TN 65-AX-6602 which were seized on 10.07.2020 by the third respondent.

For Petitioner : Mr.D.Senthil

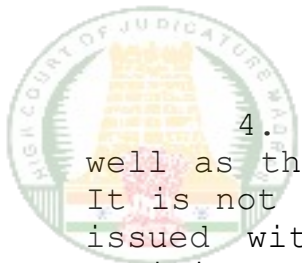
For Respondents : Mr.M.Rajarajan,
Government Advocate.

O R D E R

Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondents.

2. The petition mentioned vehicles were seized by the respondents in connection with Crime No.244 of 2020 registered on the file of the third respondent.

3. The petitioner's counsel stated that the very seizure is illegal. He was not willing to be put on terms. Therefore, this Court directed the respondents to file counter affidavit.



4. I went through the contents of the counter affidavit as well as the other proceedings enclosed in the typed set of papers. It is not in dispute that the petitioner's husband Ravichandran was issued with orders to dig farm pond in Survey No.250/1. The petitioner claims that the petitioner's vehicles were engaged only in connection with the said digging works which were specifically authorised by the Deputy Director of Horticulture, Ramanathapuram District, vide letter No.Thi2/1784/2019 dated 23.06.2020.

5. The petitioner's counsel's submission no doubt commands some confidence. But then the petitioner is not in a position to explain as to how $\frac{1}{2}$ unit of river sand was found in the petition mentioned tractor. As rightly pointed out by the learned Government Advocate, the sand removed from the petitioner's land could have been used only for constructing the bunds of the pond. But they were taken and illegally transported to the Bricks Chamber. Of course the Bricks Chamber is also belonging to the petitioner.

6. The learned Government Advocate states that even though the criminal case has been registered, the vehicles in question are yet to be produced before the jurisdictional Court. The case is still under investigation. I am of the view that so long as the vehicles have not been produced before the Jurisdictional Court, the Writ Court will always have the power to direct for the release of the vehicles.

7. The petitioner's counsel gives an undertaking that the petitioner will see to it that the vehicles are not involved in any other offences of similar nature. The vehicles will be produced before the authority or the Court concerned as and when required. The learned counsel appearing for the petitioner states that the vehicles will not be alienated.

8. The submission of the learned counsel for the petitioner is placed on record. If the undertaking given before this Court is breached, the benefit of this order will stand recalled and the vehicles in question will be taken back to custody and it will be released only after getting orders from this Court on such terms as this Court may deem it fit to impose.

9. I am of the view that keeping the petition mentioned vehicles in the custody of the respondents is not going to serve any purpose. The Hon'ble Supreme Court in the decision reported in (2002) 10 SCC 283 (Sunderbhai Ambalal Desai and Others V. State of Gujarat) has held as follows:-

"17. In our view, whatever be the situation, it is of no use to keep such seized vehicles at the police stations for a long period. It is for the Magistrate to pass appropriate orders immediately by taking appropriate bond and guarantee as well as



security for return of the said vehicles, if required at any point of time. This can be done pending hearing of applications for return of such vehicles.

10. In as much as the removal of sand was only from the petitioner's patta land and was only for own use, I am inclined to show indulgence. Since the JCB was used only for excavating sand, I am not imposing any cost for the release of the JCB. Therefore, the respondents are directed to release the said vehicles subject to the following conditions:-

- a) The petitioner shall remit a sum of Rs.75,000/- (Rupees Seventy Five Thousand only) to the credit of the District Legal Services Authority, Ramanathapuram District. It will be a non-refundable payment. The concerned Principal District Judge shall utilise the said fund immediately for the welfare of the Advocates' Clerks in the District and send user certificate to the Registry of this Court.
- b) The petitioner shall not alienate or encumber the vehicles in question till the proceedings are completed.
- c) The petitioner shall produce all the documents pertaining to the ownership of the seized vehicles.
- d) As and when the respondents call for the vehicle for enquiry, the petitioner has to produce the vehicles in question and he shall cooperate with the enquiry to be conducted by the respondents.

11. Upon completion of these formalities, the respondents shall release the vehicles forthwith without any delay. If this undertaking given by the petitioner is breached, the petitioner will not be entitled to interim release of the vehicles in future. The Writ Petition is allowed accordingly. There shall be no order as to costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

<https://hcservices.ecourts.gov.in/hcservices/>



To:

1. The Revenue Divisional Officer cum Sub Collector,
Office of the Revenue Divisional Office cum
Sub Collector,
Paramakudi,
Ramanathapuram District.
2. The Assistant Director,
Department of Geology and Mines,
Ramanathapuram,
Ramanathapuram District.
3. The Inspector of Police,
Paramakudi Taluk police station,
Paramakudi,
Ramanathapuram District.
4. The Principal District Judge,
Ramanathapuram District.

Copy to:

The District Level Legal Services Authority,
Ramanathapuram District.

W.P. (MD) No. 8197 of 2020
04.08.2020

pmu
SDS (17.08.2020) 4P-6C